

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**HARLAN RAY KENMORE**

Claimant

VS.

**HARPER COUNTY**

Respondent

AND

**EMPLOYERS MUTUAL CASUALTY COMPANY**

Insurance Carrier

Docket No. 214,523

**ORDER**

Respondent asked Appeals Board review of the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes dated October 10, 1996.

**Issues**

Respondent's application for review requested Appeals Board review of all issues addressed by the Administrative Law Judge. The Administrative Law Judge found claimant was injured while working for the respondent on December 23, 1995. The Administrative Law Judge also found claimant gave timely notice to the respondent within ten days of the accident. Accordingly, those are the two issues before the Appeals Board for review.

**FINDINGS AND FACT AND CONCLUSION OF LAW**

After reviewing the preliminary hearing record and considering the brief of the respondent, the Appeals Board finds as follows:

Both issues raised by the respondent are jurisdictional issues listed in K.S.A. 44-534(a), as amended, that grant Appeals Board review of a preliminary hearing order.

Claimant presented uncontradicted testimony and contemporaneous medical reports that established he was injured while performing his regular job duties for respondent on December 23, 1995. Claimant testified he slipped and fell into a trash compactor as he was kicking loose trash into the compactor. Medical records from the emergency room at a local hospital, dated December 23, 1995, indicated claimant was treated for severe right chest pain and skin abrasions and bruising. Based on this evidence, the Appeals Board finds claimant has met his burden of proving he sustained an accidental injury while employed by the respondent on December 23, 1995.

Respondent, in its appeal brief filed before the Appeals Board, focused on the argument that claimant failed to give timely notice of accident as required by K.S.A. 44-520. Respondent admitted claimant told the respondent he had fallen into the trash compactor and had injured his right side and back within ten days. However, respondent argues claimant

failed to notify respondent within the required ten days he also injured his neck and left arm. Therefore, the respondent contends claimant's claim for those injuries should be denied.

The Appeals Board disagrees with the respondent's arguments. The notice statute found at K.S.A. 44-520 requires the employee to give notice to the employer of the accident within ten days. The notice statute does not require the employee to specify the injuries arising out of such accident. In this case, the claimant testified that the injuries to the right side of his body were more symptomatic than his neck and left arm injuries immediately following the accident. The claimant explained he had not mentioned the neck and left arm problems until such time the other symptoms improved. The claimant further testified that his right side and back symptoms improved but his neck and left arm symptoms worsened as he continued to work. The Appeals Board finds, based on the description of claimant's accident, that it is reasonable to conclude the mechanism of the accident caused not only injuries to claimant's right side of his body but also to his neck and left arm. Accordingly, the Appeals Board affirms the Administrative Law Judge's finding that claimant gave timely notice of accident to respondent.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes dated October 10, 1996, should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1996.

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BOARD MEMBER

c: Andrew E. Busch, Wichita, KS  
David J. Morgan, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director